



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY****REGION 9****75 Hawthorne Street
San Francisco, CA 94105-3901**

August 27, 1997

MEMORANDUM**SUBJECT:** McCormick & Baxter Creosote Company Superfund Site
Schedule for Consent Decree Negotiations**FROM:** Danita Yocom
EPA Region 9**TO:** Margarita Padilla
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Attached is a proposed schedule for consent decree negotiations which would need to be met if we are to have a final consent decree in place before the insurance trial on January 6, 1998.

As you will note, the time necessary to comply with the procedural steps leaves little time to actually negotiate the decree. (The schedule does not consider delays that may arise in the event that Union Pacific challenges the decree.) It may be that the insurance carriers would be satisfied (or would have to be) with a signed consent decree. Seemingly, some of these issues could be addressed in either this consent decree or in the insurance litigation settlement. Even so, we still have a short time frame for beginning negotiations.

To bring expectations to a more realistic level, I suggest that we submit the proposed schedule to HEWM and initiate a discussion about what they realistically need to settle with the carriers. At the same time, we need to decide what a realistic but speedy schedule would be. If we could give HEWM some idea of what we can realistically accomplish, that might

help matters.

Along those lines, Kim Muratore is working on the liability analysis, which Region 9 believes is necessary before we can make any recommendations regarding consideration for settlement. We propose a conference call as soon as she has completed that step. We are shooting to get the supplemental 104(e) regarding liability out the week of September 8 and would request a response from CMcM by September 19, 1997. We suggest that, soon after Region 9 distributes our written analysis to the other agencies (i.e. the week of September 22), we have a conference call to formulate strategy and make sure that all the agencies are, reasonably, on the same page. We could then send out a consent decree the following week (i.e. the week of September 29). Recognizing that this plan is also optimistic and largely depends on the ability to quickly complete the legal analysis and the ability to pay analysis, please comment on this schedule as well.

To get things going, please submit any comments you may have on the schedule below by close of business September 3 and any suggestions you have on strategy for dealing with the schedule. If we have consensus on this part, will fax the revised schedule to HEWM. Please call me if you have any questions or comments (415) 744-1347. Thanks.

**McCormick & Baxter Creosote Company Superfund Site
Consent Decree Negotiations Schedule**

The following are estimated deadlines if we are to have a final consent decree in place prior to the insurance trial date, January 6, 1997.

- September 15, 1997 U.S. and State send a draft proposed Consent Decree to CMcM.
- September 22, 1997 First negotiation meeting in San Francisco.
- October 6, 1997 Submit final Consent Decree to U.S. and State management for approval. (Four business weeks.)
- November 5, 1997 Finalize Consent Decree to Lodge in District Court. (10 business days to Lodge.)
- November 19, 1997 Submit to the federal register. (Two business weeks generally necessary between submission and publication. 3 extra days added to allow for Thanksgiving holiday.)
- December 5, 1997 Publish in the federal register for 30 days. (33 day window.)